



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

**WILL WILSON**  
ATTORNEY GENERAL

March 29, 1962

Honorable J. W. Edgar  
Commissioner of Education  
Texas Education Agency  
Austin, Texas

Opinion No. WW-1293

Re: Whether the position of  
Investment Officer and of  
Assistant Commissioner for  
Vocational Rehabilitation  
and Special Education may  
be paid an annual salary  
rate of \$11,000 under the  
facts submitted.

Dear Dr. Edgar:

Your request for an opinion on the above subject  
matter reads as follows:

"In January, 1962, the State Board of  
Education completed plans for expanding the  
Permanent School Fund Investment Program to  
include corporate securites. This expansion  
was made to implement statutes enacted by the  
57th Legislature, Regular Session. The position  
Investment Officer, at an annual salary of \$11,000,  
was established to serve as administrative head  
of this program.

"The Board also established the position of  
Assistant Commissioner for Vocational Rehabilitation  
and Special Education at an annual salary of  
\$11,000. This position was established to give  
direction to five divisions of the Texas Education  
Agency that are concerned with services for dis-  
abled individuals.

"At the direction of the State Board of  
Education a request for approval of these positions  
was made to the Classification Officer. This  
request was made in accordance with House Bill  
189, Acts of the 57th Legislature, codified as  
Article 6252-11, V. C. S. A copy of this request  
to the Classification Officer and a copy of the  
descriptions of the jobs are attached. The  
Classification Officer with the advice of the

Legislative Audit Committee approved each of the positions enumerated above and assigned these positions to Salary Group 21.

"At the direction of the State Board of Education a request was made to the Governor for the two positions named above to be excluded from the Position Classification Plan under the provision of Section 2, House Bill 189, Acts of the 57th Legislature. In accordance with this request the Governor excluded each of these positions from the Position Classification Plan. Copies of the instruments affecting these approvals are attached.

"Mr. Vane Burnett was appointed to fill the new position, Investment Officer. Mr. Charles Eskridge was appointed to fill the new position, Assistant Commissioner for Vocational Rehabilitation and Special Education.

"The Comptroller of Public Accounts has refused to pay the salary of the Investment Officer and of the Assistant Commissioner for Vocational Rehabilitation and Special Education at an annual salary rate of \$11,000.

"Does the Governor under the provision of House Bill 189, Acts of the 57th Legislature, have the authority to exclude a job from the Classification Plan when such a job has previously been classified and assigned a salary group number by the Classification Officer?

"If the answer to the above question is in the affirmative, does the Comptroller of Public Accounts have the authority to issue warrants from the appropriations to the Texas Central Education Agency for the payment of salaries established for these positions at an annual rate of \$11,000 each?"

Section 2 of House Bill 189, Acts of the 57th Legislature, Regular Session, Chapter 123, p. 238 (codified in Vernon's as Article 6252-11, Vernon's Civil Statutes) excepts from the Position Classification Plan such persons "as may hereafter be excluded from such Position Classification Plan by executive order of the Governor or by direction of the Legislature."

Section 5 of House Bill 189 also provides:

" . . . Should any governing board or executive head of an agency affected by the provisions of this Act find need for the employment of a person in a class or kind of work which he believes is not described in the Position Classification Plan, such board or executive head shall notify the Classification Officer of the facts, and such Classification Officer shall promptly provide, within the limitations of the General Appropriations Act and subject to the approval of the State Auditor after obtaining the advice of the Legislative Audit Committee, either an existing or a new class description of work and a corresponding salary range which will permit such needed employment. Notification of such action shall be made to the Comptroller of Public Accounts by the Classification Officer. Nothing in this paragraph or in this Act, however, shall be so construed as to authorize an increase in the number of positions or in the amount of appropriations as may be set forth for any such agency in the General Appropriations Act."

Under the facts submitted with you request as evidenced by letters of Mr. Everett Anschutz, Classification Officer, dated February 5, 1962, to the Comptroller of Public Accounts and the approval of the Governor of the exclusion on February 15 and 16, 1962, it is our opinion that the position of Assistant Commissioner of Vocational Rehabilitation and Special Education and the position of Investment Officer have been excluded from the Position Classification Plan pursuant to the above quoted provisions of House Bill 189 of the 57th Legislature. You are therefore advised that the

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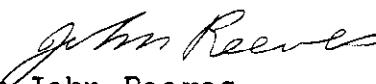
Comptroller of Public Accounts has authority to issue warrants from the appropriation to the Texas Central Education Agency for the payment of salaries established for these positions at an annual rate of \$11,000 each.

S U M M A R Y

Where the positions of Investment Officer and of Assistant Commissioner for Vocational Rehabilitation and Special Education of the Central Education Agency has been excluded from the Position Classification Plan by executive order of the Governor and by direction of the Classification Officer with the approval of the State Auditor, such positions may be paid an annual salary in excess of amounts provided for in the Position Classification Plan.

Yours very truly,

WILL WILSON  
Attorney General of Texas

  
By John Reeves  
Assistant

JR:kkc

APPROVED:  
OPINION COMMITTEE  
W. V. Geppert, Chairman

Howard Mays  
Virgie Pulliam  
Fred Ward

REVIEWED FOR THE ATTORNEY GENERAL  
BY: Houghton Brownlee, Jr.